

UNITED STATES COURT OF APPEALS

Filed 4/9/96

TENTH CIRCUIT

UNITED STATES OF AMERICA, for
the use of DDC INTERIORS, INC.,

Plaintiff - Appellee,

v.

DAWSON CONSTRUCTION
COMPANY, INC.; UNITED STATES
FIDELITY AND GUARANTY
CORPORATION,

Defendants - Appellants.

No. 95-1360
(D.C. No. 94-B-2699)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HENRY, BRISCOE** and **LUCERO**, Circuit Judges.

DDC Interiors, Inc., a subcontractor, filed suit under the Miller Act, 40 U.S.C. § 270a and b, against the prime contractor, Dawson Construction Co., Inc., and its surety, United States Fidelity and Guarantee Co. (collectively, defendants). DDC alleged it had not been fully paid for labor and materials supplied pursuant to its contract with Dawson.

* At the parties' request, the case is unanimously ordered submitted without oral argument pursuant to the applicable rules. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Defendants moved to stay the litigation, pending resolution of Dawson's dispute with the United States General Services Administration, which hired Dawson as prime contractor. The district court denied the stay.

From that denial of stay, defendants now appeal. They argue the district court erroneously concluded there was no arbitration agreement in the subcontract between Dawson and DDC Interiors. They also argue the district court should have issued the stay pursuant to the Federal Arbitration Act, 9 U.S.C. § 3.

The relevant facts are set forth in the district court's opinion, United States ex rel. DDC Interiors, Inc. v. Dawson Constr. Co., 895 F. Supp. 270 (D. Colo. 1995). Upon careful consideration of defendants' arguments, the record, and controlling law, we affirm the denial of the stay for substantially the same reasons stated by the district court.

AFFIRMED.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge